



December 11, 2000

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2000-4669

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142094.

Dallas Area Rapid Transit ("DART") received a request for information relating to complaints filed against the requestor. You claim that the information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Although you do not indicate which specific subsection of section 552.108 excepts the submitted information from required public disclosure, you refer to the responsive information as "internal records and notations" that relate "to an investigation that did not result in a conviction or deferred adjudication." Thus, we construe your argument to invoke section 552.108(b)(2), which states:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...
(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

You explain that the requested information pertains to complaints made against a law enforcement officer. However, section 552.108 is inapplicable where a complaint against

a law enforcement officer does not result in a criminal investigation or prosecution. *Morales v. Ellen*, 840 S.W.2d 519, 525-526 (Tex. App.-El Paso, 1992, writ denied) (construing statutory predecessor). You do not inform us, nor do the documents themselves reveal, that a criminal investigation or prosecution resulted from the complaints. Thus, section 552.108 is inapplicable to the submitted information.

However, portions of the requested information must nevertheless be withheld from the public pursuant to the act's mandatory exceptions to public disclosure.¹ Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Consequently, DART may release the medical records we have marked only in accordance with the provisions of the MPA. We also conclude that the prescription information must be withheld from the public on constitutional privacy grounds. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977).

We next note that the records at issue contain information that must be withheld from the public pursuant to section 552.117 of the Government Code, which requires withholding of the home addresses, home telephone numbers, and social security numbers of DART employees, as well as information revealing whether the employees have family members. Accordingly, DART must redact these types of information from the records at issue, but only if the employee had elected to keep this information confidential in accordance with section 552.024 of the Government Code. Assuming the relevant employees made such an election prior to the department's receipt of the open records request, we conclude that these

¹Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise mandatory exceptions to disclosure because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352.

types of information must be withheld. *See* Open Records Decision No. 530 (1989). However, even if such an election had not been made, we note that section 552.117(2) requires that DART withhold the same categories of information pertaining to “a peace officer as defined by Article 2.12, Code of Criminal Procedure.” Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

Finally, we note that the records at issue contain an individual’s driver’s license number and a license plate number. Section 552.130(a)(1) of the Government Code requires DART to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, the department must withhold the Texas driver’s license numbers pursuant to section 552.130(a)(1) of the Government Code. Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to “a motor vehicle title or registration issued by an agency of this state.” Consequently, DART must withhold all license plate numbers contained in the records at issue pursuant to section 552.130(a)(2).

In summary, none of the information at issue may be withheld under section 552.108 of the Government Code. However, DART must withhold all medical records pursuant to section 159.002 of the Occupations Code and all drug prescription information pursuant to constitutional privacy. All information protected by section 552.117 must be withheld if the employee to whom the information relates has made a timely election to have the information withheld under section 552.024, unless the employee is a peace officer, in which case no election under section 552.024 is necessary. The driver’s license number contained in the records must be withheld pursuant to section 552.130(a)(1), and the license plate information must be withheld pursuant to section 552.130(a)(2). DART must release the remaining responsive information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/er

Ref: ID# 142094

Encl: Submitted documents

cc: Mr. Billy Rawlinson
1909 Windlea Drive
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(w/o enclosures)